

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI**

ASSOCIATED INTERNATIONAL)
INSURANCE COMPANY, an Illinois)
Corporation,)

Plaintiff,)

vs.)

FIRST SPECIALTY INSURANCE)
CORPORATION, a Missouri Corporation,)

Defendant.)

Civil Action No. 16cv239 HSO-JCG

**MOTION TO DISMISS COMPLAINT PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1), 12(b)(6) AND 12(b)(7)**

Defendant, First Specialty Insurance Corporation (“FSIC”), submits its Motion To Dismiss Complaint Pursuant To Federal Rules of Civil Procedure 12(b)(1), 12(b)(6) and 12(b)(7) (“Motion”) and states as follows:

1. Plaintiff’s, Associated International Insurance Company’s (“AIIC’s”), complaint in this action (“Complaint”) alleges that: (a) AIIC issued insurance policy to metal fabrication contractor Accu-Fab & Construction, Inc. (“Accu-Fab”) in effect during 2014. (b) Accu-Fab was performing work at Omega Protein, Inc.’s (“Omega’s”) Moss Point, Mississippi facility on July 28, 2014 when an explosion occurred. (c) “[C]laims,” including at least one wrongful death claim against Omega, have been asserted due to the explosion. (d) AIIC issued an insurance policy under which Accu-Fab was the Named Insured and Omega is an Additional Insured. (e) FSIC issued an insurance policy under which Omega is an insured. [ECF Doc. 1]

2. The Complaint does not allege that: (a) FSIC owes or may owe any legal or equitable duty to AIIC; (b) FSIC has breached or may breach a duty that it owes to AIIC or any other person or entity; (c) that any insured has made a pending claim under the AIIC or FSIC

insurance policies at issue, or (e) that AIIC will be harmed in any way, now or in the future, if it does not obtain the declaration it seeks in this action. [ECF Doc. 1]

3. Most of the Complaint's substantive allegations are taken word-for-word from a declaratory judgment action that AIIC filed against Accu-Fab and Omega in the Jackson County, Mississippi Circuit Court on or near May 15, 2015 ("AIIC State Court DJA"). That action remains pending, and Omega has moved for summary judgment on two of the three coverage defenses that AIIC has raised in the case. *See* Exs. 1 and 2 (cover pages of motions for summary judgment in AIIC State Court DJA). AIIC's prayer for relief in this action largely repeats and fully subsumes the prayer for relief in the AIIC State Court DJA.

4. In this Motion, FSIC requests the Court to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1), on the basis that AIIC cannot meet its burden of demonstrating that it has standing to obtain a declaratory judgment against FSIC. AIIC lacks standing because the Complaint fails to allege a "case" or "controversy" as required by U.S. Const. Art. III, § 2, cl. 1, or an "actual controversy" as required by 28 U.S.C. 2201 ("Declaratory Judgment Act").

5. FSIC seeks dismissal pursuant to Fed. R. Civ. P. 12(b)(6) on the basis that the Complaint fails to plead an "actual controversy" as required by the Declaratory Judgment Act.

6. FSIC seeks dismissal pursuant to Fed. R. Civ. P. 12(b)(7) on the basis that Omega and Accu-Fab, which AIIC has not named in this action, are required parties under Rule 19. The Complaint alleges that Accu-Fab is the AIIC's Named Insured and that Omega is AIIC's Additional Insured. The Complaint alleges that Omega is FSIC's insured. The Complaint seeks a "Final Judgment declaring that [AIIC] owes no duties of defense nor indemnity" due to the 2014 explosion at Omega's Moss Point facility and "that such duties, if any, are owed by

[FSIC].” Accordingly, the Complaint seeks to define the obligations of AIIC and FSIC to their respective insureds without joining the insureds as parties in this action.

7. This motion relies on a supporting Memorandum and the following exhibits:

Exhibit Number	Description
1	Cover page of Omega’s Motion for Summary Judgment filed in AIIC State Court DJA on July 13, 2015
2	Cover page of Omega’s Motion for Summary Judgment filed in AIIC State Court DJA on August 25, 2016.
3	Redline Comparison of Paragraphs 7-15 of AIIC’s Mississippi State Court Declaratory Judgment Action Against Accu-Fab and Omega <i>with</i> Paragraphs 8-16 of Complaint In This Action

WHEREFORE, FSIC requests this Honorable Court to grant its Motion to Dismiss Complaint Pursuant To Federal Rules of Civil Procedure 12(b)(1), 12(b)(6) and 12(b)(7).

Respectfully submitted, this the 25th day of August, 2016.

Respectfully submitted,

/s/ David A. Barfield

David A. Barfield, (MS Bar #1994)
One of the attorneys for Defendant, First
Specialty Insurance Corporation

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CERTIFICATE OF SERVICE

I, David A. Barfield, one of the attorneys of record for First Specialty Insurance Corporation, do hereby certify that I have this day caused to be sent via ECF, a true and correct copy of the above and foregoing document to:

Mark D. Morrison, Esq.
Adcock & Morrison, PLLC
P. O. Box 3308
Ridgeland, MS 39158

ATTORNEY FOR PLAINTIFF

So certified, this the 25th day of August, 2016.

/s/ David A. Barfield
David A. Barfield

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